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**International Criminal Law. . *Old Evidence and Core International Crimes* edited by BERGSMO Morten, and CHEAH Wui Ling. Beijing: Torkel Opsahl Academic EPublisher, 2012. xviii+313 pp. Hardcover: £16; \ \$22.50.**

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metaphor of a *pas de deux*, an intricate dance for two. This lends a structure to the book, with its four parts organized as the musical movements typical of this form of dance—an “entrée”, “adagio”, “variations”, and a “coda”. Covering diverse issues, the individual contributions reprise the general theme in different ways, and, understandably, are not always in accord. The musical metaphor is therefore apposite for conveying the dynamic interactions both between the two areas of law and between the different contributions of the authors. As the editor explains, the book “enters an ongoing, fluid conversation”, which “explores the movements unfolding between” IHL and IHRL.

Part II, “Adagio” comprises three chapters, each examining some broad normative and theoretical issues regarding the interaction between the two areas of law. Yuval Shany discusses the tensions between a security-centred, IHL-based “armed conflict” paradigm and a human rights-centred “law enforcement” paradigm, in the so-called “war against terror”. Marco Sassóli builds on this through his examination of the IHL/IHRL interactions in a range of other allegedly new types of conflict, including asymmetric conflicts, conflicts in failed states, and UN peace operations. Marko Milanović examines critically the adequacy of existing legal mechanisms for resolving norm conflicts between IHL and IHRL. He argues that there are tools for norm conflict resolution and norm conflict avoidance, as well as situations where such conflicts may be unavoidable and unresolvable through the tools of legal interpretation. The incisive analysis in this standout chapter helps bring clarity to areas frequently left blurred or imprecise in much writing on the relationships between IHL and IHRL.

Part III, “Variations”, provides detailed analyses of the IHL/IHRL interplay in three specific contexts. The editor examines belligerent occupation in the Occupied Palestinian Territories, arguing that both IHL and IHRL are used to justify and normalize unlawful activity. Andrea Gioia then examines IHL/IHRL in the practice of the European Court of Human Rights, while Ana Filipa Vrdoljak discusses how IHL and IHRL have addressed the issue of cultural heritage. Finally, in the “Coda”, Paola Gaeta examines the relationships between IHL and IHRL in the area of compensation to victims of war crimes, while Christine Bell offers some different conceptualizations of the legal regimes for post-conflict accountability—including accountability both for violations during armed conflict and for violations by international actors with post-conflict responsibility for peace-building.

Reflecting their origins as a series of lectures, several of the chapters cover some of the same ground and could perhaps have been pared back somewhat to make the key arguments more concise. However, as the editor acknowledges, navigating forward on this topic is not a straightforward path, but rather, “a process wrought with interpretive twists and turns in the often turbulent waves of a multitude of competing narratives, shifting paradigms, polar doctrines, and a patchwork of governing norms”. Overall, the book makes very valuable contributions that take the debate forward on this important and challenging topic. As such, it will be useful for international law students, academics, and practitioners interested in the fields of IHL and IHRL.

*reviewed by Sarah McCOSKER*

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## **International Criminal Law**

### *Old Evidence and Core International Crimes*

edited by Morten BERGSMO, and CHEAH Wui Ling.

Beijing: Torkel Opsahl Academic EPublisher, 2012. xviii+313 pp. Hardcover: £16; \$22.50.

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This anthology examines the complex twin effect of time on the trials of core international crimes: on the one hand, access to archives may improve over time, and so the passage of time could improve the amount and quality of documentary evidence. On the other hand, crime scenes could erode over time, and memories of specific events could fade. Time is an especially critical matter in

both international criminal trials and domestic trials that address core international crimes, because both typically start only after a considerable amount of time has lapsed since the commission of the crimes. This anthology consists of papers presented at a seminar in Dhaka in 2011 against the backdrop of Bangladesh's decision to investigate atrocities committed during the 1971 War of Liberation. The book is divided into two parts: the first examines the effect of time on evidence production and trials in general; the second part zooms in on the latest developments in Bangladesh as a timely case-study.

Most of the contributors to the first part have hinged their discussions on the three broad areas of difficulty concerning old evidence: passage of time, production of old evidence, and public perception. David Cohen considers issues relating to the vagaries of memory, including the problem of differentiating a witness's testimony from the collective memory of a society, and the effect of trauma on the memory and testimony of a witness. Martin Witteveen addresses similar issues from a slightly different angle. He examines memory in different phases—the encoding, retention, and retrieving of information—and problems relating to criminal investigation and subsequent trials. Anya Topiwala and Seena Fazel resolve the issue of trauma and memory from the viewpoint of a medical expert, asserting that as long as certain interrogation guidelines are followed, the memory of a traumatized victim can still be a valid source.

The production of old evidence raises issues such as how to take witness statements in a sensitive and unbiased manner, case consolidation from witness interviews, and the role of judges in filtering evidence. Several contributors have touched upon this last issue. For example, Andrew Cayley considers the production of old evidence in four areas: crime scenes, documents, witnesses, and expert evidence from the perspective of an international prosecutor. Patrick J. Treanor demonstrates the increasingly important role in international criminal trials of expert reports by historians.

Public perception is another complicated issue. Agnieszka Klonowiecka-Milart considers the effects of collective conceptions, as well as the importance of the first case. Mahdev Mohan provides some in-depth analysis of the messaging effect of international criminal trials. Remarkably, Mohan not only offers a list of highly instructive messages that a trial can send, but also provides recommendations regarding how this can be achieved. He advocates “engaging but not over-burdening” civil society so as to send the message that there is a distinction between judicial and non-judicial actors. Mohan constantly emphasizes the need to be sensitive to victims, who play an important role in shaping public perception.

The second part of this volume contextualizes the three areas of difficulty as regards Bangladesh, where the crimes committed in the 1971 War of Liberation are now being tried before the Bangladesh International Crimes Tribunal. M. Amir-Ul Islam offers a thorough historical overview of the atrocities committed and makes a compelling case for ending the culture of impunity. According to M. Amir-Ul Islam, the forty-year delay in conducting the trials following the establishment in 1973 of the legal framework for the Tribunal is a principal reason for the recurring violence in Bangladesh's recent history. As Bangladesh's Minister of Law, Justice, and Parliamentary Affairs, Shafique Ahmed reassures the audience of Bangladesh's commitment to end impunity for genocide, crimes against humanity, and war crimes at all levels. Ahmed raises high hopes that the trials will be conducted “in accordance with international legal and human rights standards” and in a manner “that maintains fairness and due process of law”. His optimism is not, however, shared by the following contributor, Md. Shahinur Islam, who raises valid concerns about the standards of these trials; he stresses that the Tribunal is of a purely domestic nature, and its governing legal framework can only be interpreted in the light of the International Crimes (Tribunals) Act 1973. There may be a considerable gap between the 1973 legislation and that of international legal standards. Finally, Otto Triffterer, one of the founding fathers of international criminal law, gives an overview of the historical context of the international legal situation at the time that the 1973 Act was drafted.

Overall, the anthology is to be praised for going beyond theory to consolidate a list of practical advice and solutions. The anthology does not focus only on the effects of old evidence but also on how to apply old evidence in the interests of fair criminal justice. Given that the passage of time is inevitable, it is wise to fight with time, not against it. The anthology is right to note that perhaps the

most significant advantage of time is the opportunity it affords a society to form its own perceptions about the trial of core international crimes. As the contributors to this volume rightly stress, for the process to be perceived as just and equitable there must be the utmost respect for the rule that evidence—old or new alike—needs to meet international standards of proof.

*reviewed by* WU Xueqin Kristin

## Other Areas of International Law

### *International Watercourses Law and a Perspective on Nepal-India Cooperation*

by Surya Nath UPADHYAY.

Kathmandu: Ekta Books, 2012. 435 pp. Hardcover: \$35.

doi:10.1017/S2044251314000204

This book looks at relations between India and Nepal over water from the perspective of international law. It is designed to raise awareness of how opportunities to utilize water resources most effectively are being missed and to answer some critical questions such as: “Why?” “How can mutual trust be built and most importantly where to begin?” The book is rich with primary sources and is based on the first-hand experience of the author himself, who participated as a senior member of Nepal’s negotiating team concluding the Treaty on Integrated Development of Mahakali River. This book will help policy-makers of both countries to build harmonious ways forward while addressing the problems of water shortages and energy crises.

This book is divided into two parts with nine chapters in total. The first part deals with international watercourses law; the second part looks at Nepal-India co-operation on watercourses; and the final chapter concludes with valuable recommendations. Chapter Two provides a detailed study of the development of international law on the non-navigational use of international watercourses. While doing so, the chapter presents a wealth of materials including international conventions, various cases to date, national and international judicial decisions, various agreements and treaties, and the opinion of leading advocates. Chapter Three demonstrates the importance of substantive and procedural law on international watercourses, and also examines World Bank policy on international watercourses, including whether the Bank is immune from the shadow of the politics of powerful nations.

Chapter Four introduces the river systems of Nepal, which shows how blessed Nepal is in terms of water, and that, despite all of the rivers from Nepal flowing to India, water stress still exists in India. This chapter recommends that India enhance water supply in the dry season by creating reservoirs in Nepal and suggests that the rivers are more than capable of feeding the increasing energy demand of both countries. The chapter also introduces other possibilities that are being missed, such as inland river transportation, which could drastically reduce transport costs and link Nepal and other provinces of India to the coast. The writer aims to raise awareness of unmanaged rivers—these have caused, and will continue to cause, huge loss of life and property—and emphasizes that without a long-term visionary plan the fate of millions of people in Nepal and India is likely to be determined by the fury of the monsoon. This is more of a compulsive issue for India than for Nepal.

Chapters Five and Six look at two major projects in Nepal: the Kosi Project Agreement and the Gandak Project Agreement, respectively. The analysis carried out in these chapters suggests that Nepal is deprived of the benefits that it was promised; hence, in reality the act of balancing benefits is completely missing. The author provides valuable lessons for the future. Chapter Seven presents the partially implemented Treaty on Integrated Development of Mahakali River, while Chapter Eight analyzes the approach of India towards other nations with whom it shares watercourses.

The final chapter considers what lies ahead for India and Nepal as regards water resources co-operation. Nepal is explained to be in an advantageous position compared to India because of Nepal’s topography, which is more suitable for building huge reservoirs. Nonetheless, the author